HIGH COURT OF UTTARANCHAL AT NAINITAL

DAO No. 73 OF 2004

Brijesh Kumar Tyagi & another ..... Appellants

Versus

National Insurance Co.Ltd & others ..... Respondents

Sri S.K. Jain, Advocate for the petitioner
Sri D.S. Patni, Advocate for the respondent no.1.

Dated : 5th August 2004

Hon. Rajesh Tandon,J.

Heard the learned counsel for the parties at length.

Present appeal has been preferred against the judgment and award dated 20.11.2003 passed by M.A.C.T. Hardwar, awarding a sum of Rs. 1.22, 000/- to the claimants respondents no.2 and 3.

Briefly stated the facts giving rise to the present appeal are that claimants filed a claim petition on account of the death of Nitin in a motor vehicle accident. The claimants have submitted that on 13.12.1998, deceased was standing at Bus Stand Meerut for going to Hapur. At 6.30 AM bus No. UP 15F-9469 which was being driven by Sri Nanak Chand rashly and negligently came from the side of Meerut city and hit deceased Nitin. The deceased sustained fatal injuries in the accident and

succumbed instantaneously. The deceased was earning Rs. 4,000/- by tutoring the students. The claimants claimed a sum of Rs. 13,5000/- as compensation.

Opposite party no.3 National Insurance Company has contested the case and filed written statement. The claim petition was also contested by opposite party no. ½.

On the pleadings of the parties the following issues were framed:

1. Whether the deceased Nitin died due to the accident involving bus No. UP 15F-9469 on 13.12.1998 at 6.30 AM at Hapur Bus Stand, Meerut?
2. Whether the driver of the bus UP 15F-9469 has no valid permit, license and fitness certificate and as such flouted the terms and conditions of the insurance policy?
3. Whether the accident was caused due to mechanical failure of the bus? If so, its effect?
4. Whether the claimants are entitled to get compensation? If so, from which of the parties?
5. Other relieves?

The Claims Tribunal has held that the accident was caused due to rash and negligent driving of bus No. UP 15F-6469 and not due to any mechanical fault. The Tribunal has also has that the bus has valid permit and fitness certificate and the vehicle was duly insured with the National Insurance co. but the driver of the bus has no valid driving licence.

The claims Tribunal awarded a sum of Rs. 1, 2000/-as compensation to the claimants against the Insurance Company. However, liberty was given to the Insurance Company to realise the amount of compensation from the owner of the bus.

In the appeal before this Court, the Judgment and award passed by the Claims Tribunal has been assailed on the limited ground that at the time of accident the driver of the bus in question has a valid driving licence. The appellant has filed copy of the licence as annexure-3 to the appeal. Sri D.S. Patni, Counsel for the insurance company, has submitted that since the licence has been filed in appeal. It requires scrutiny by the Claims Tribunal concerned and the case should be remanded back to the Motor Accident Claims Tribunal.

The Apex Court in the case of United India Insurance Co. Ltd; vs. Lehru and others as under:

"Now let us consider section 149(2). Reliance has been placed on Section 149 (2) (a) (ii). As seen in order to avoid liability under this provision it must be shown that there is a breach. As held in Skandia's and Sohan Lal Passi's cases (supra) the breach must be on part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd result. Just to take an example, suppose a vehicle is stolen while it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the Insurance Company disown liability? The answer has to be an emphatic "no". To hold otherwise would be to negate the very purpose of the compulsory insurance. The injured or relatives of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the Legislature, in its wisdom, has made insurance at least third party insurance compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the

Company is to insurance. In all businesses there is an element or risk. All persons carrying on business must taken risks associated with that business. Thus it is equitable that the business which in run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. Those provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases viz. that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The Insurance Company must establish that the breach was on the part of the insured."

The appeal is, therefore, allowed. Judgment and award dated 20.11.2003 passed by the Motor Accident Claims Tribunal, Haridwar is set aside. The case is remanded back to the Claims Tribunal for deciding it afresh after giving opportunities to the parties to adduce additional evidence.

(Rajesh Tandon J.)

5.8.2004
*Dhyani